Filed 12/22/14 In re Khalid B. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re KHALID B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. KHALID B., Defendant and Appellant.	A140708 (San Francisco County Super. Ct. No. JW126429)

Appellant, born July 1998, admitted an allegation in a Welfare and Institutions Code section 602 petition[1] that he committed involuntary manslaughter (Pen. Code, § 192, subd. (b)), and the juvenile court placed appellant in a facility in Iowa. We conclude the juvenile court abused its discretion because insufficient evidence supports the court's finding no California facility is available and adequate to meet appellant's needs.

BACKGROUND

In November 2012, the San Francisco District Attorney filed a section 602 petition alleging appellant committed involuntary manslaughter (Pen. Code, § 192, subd. (b)) and

[1] All further undesignated statutory references are to the Welfare and Institutions Code.

assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)).[2] The allegations were based on an incident during which appellant struck a man, who died after hitting his head on the pavement.

In January 2013, a second petition was filed alleging appellant committed another assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)). The petition was based on an incident during which appellant assaulted another detainee at juvenile hall.

In October 2013, following testimony by a police officer and eyewitness regarding the basis for the November 2012 petition, appellant admitted the involuntary manslaughter (Pen. Code, § 192, subd. (b)) allegation, and the balance of the November 2012 petition and the entirety of the January 2013 petition were dismissed.

In a November 2013 dispositional report, the juvenile probation department recommended that wardship be declared and that appellant be placed at an out-of-state facility. Appellant filed a written opposition to the recommendation. The juvenile court held a contested dispositional hearing on November 22. At the conclusion of the hearing, the juvenile court declared appellant a ward of the court and authorized the probation department to seek an out-of-state placement, stating, "At this time [t]he Court does not believe that there's an appropriate placement that can address [appellant's] educational and mental health needs in the State of California." On December 19, the probation department informed the court appellant had been accepted at a facility in Iowa. On January 9, 2014, the juvenile court ordered appellant placed at the Iowa facility.

DISCUSSION

Section 727.1, subdivision (a)(1) provides in relevant part, "When the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the decision regarding choice of placement shall be based upon selection of a safe setting that is the

[2] Appellant was identified in the petition by a number of aliases, including Khalid B. Appellant was previously adjudged a ward of the court in January 2012 based on a sustained allegation of attempted grand theft (Pen. Code, §§ 487, 664).

least restrictive or most family like, and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the minor's special needs and best interests." Section 727.1, subdivision (b)(1), provides that a court "may not" order placement of a ward at an out-of-state facility unless "[i]n-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor." Appellant contends the juvenile court abused its discretion by imposing an Iowa placement because there is insufficient evidence in-state facilities were unavailable or inadequate to meet his needs. We agree.

" 'We review a juvenile court's commitment decision for abuse of discretion, indulging all reasonable inferences to support its decision.' [Citation.] ' "[D]iscretion is abused whenever the court exceeds the bounds of all reason, all of the circumstances being considered." ' [Citation.] We will not disturb the juvenile court's findings when there is substantial evidence to support them. [Citation.] ' "In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law." ' " (*In re Oscar A.* (2013) 217 Cal.App.4th 750, 755-756 (*Oscar A.*).) "A trial court abuses its discretion when the factual findings critical to its decision find no support in the evidence." (*People v. Cluff* (2001) 87 Cal.App.4th 991, 998.)

The purpose of the juvenile court law is "to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. If removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. If the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents." (§ 202, subd. (a).) "Minors under the juvenile court's jurisdiction must receive the care, treatment, and

guidance consistent with their best interest and the best interest of the public. (§ 202, subd. (b).) Additionally, minors who have committed crimes must receive the care, treatment, and guidance that holds them accountable for their behavior, is appropriate for their circumstances, and conforms with the interest of public safety and protection. (*Ibid.*) This guidance may include punishment that is consistent with the rehabilitative objectives. (*Ibid.*)" (*Oscar A.*, *supra*, 217 Cal.App.4th at p. 756.)

In the present case, the probation department observed appellant posed a flight risk and danger to the community, and stated appellant "needs a treatment plan that consist[s] of positive socialization, strict supervision, structure, anger management, individual and family therapy, [and] victim restitution and victimization [e]ffects." The department's dispositional report indicates it considered and rejected three alternatives to an out-of state placement: the Log Cabin Ranch School (LCRS), the San Francisco Boys Shelter (SFBS), and placement at home on probation.[3] At the dispositional hearing, appellant's attorney did not object to an out-of-home placement, but she objected to an out-of-state placement. Appellant's counsel suggested three specific California facilities that might be available to appellant, including facilities in Turlock, Fresno, and Apple Valley.

At the close of the dispositional hearing, the juvenile court authorized an out-of-state placement, reasoning: "At this time [t]he Court does not believe that there's an appropriate placement that can address his educational and mental health needs in the state of California, but I am leaving that to the Placement Department when they explore the options." There is no indication the probation department considered any additional California facilities in its subsequent investigation; instead, its reports indicate it considered only five out-of-state placements. The juvenile court ultimately approved appellant's placement at an Iowa facility, finding "in state facilities or programs have been determined to be unavailable or inadequate to meet the minor's needs."

We find guidance in the recent decision in *Oscar A.*, *supra*, 217 Cal.App.4th 750. There, the juvenile court placed out-of-state a juvenile who had been the subject of ten

[3] Respondent does not dispute LCRS and SFBS are local placements.

petitions, absconded from two placements, and terminated from two other placements. (*Id.* at p. 753.) *Oscar A.* summarized the probation officer's efforts to find a California placement as follows: "The probation officer stated all four of Oscar's previous homes denied his readmission, and she had sent applications to all the other group homes utilized by her department. She recommended [the out-of-state placement] because it operated a higher level facility than California facilities, had more extensive services, and more supervision. When pressed by Oscar's counsel as to its differences from in-state facilities, the probation officer explained [the out-of-state placement] offers classes more frequently and provides onsite staff, such as psychiatrists. Additionally, it has an onsite school and is 'self-contained,' which would limit Oscar's access to the public and ability to run away. The probation officer further noted California had only two facilities with onsite schools, both of which had denied Oscar admission." (*Id.* at p. 755.) The court of appeal affirmed the out-of-state placement, because the probation department's investigation showed the California facilities were "either unavailable *or* inadequate." (*Id.* at p. 757.)

No search for a California placement in any way comparable to that which took place in *Oscar A.* occurred in the present case. Respondent points to no *evidence* any non-local California placements were considered. Instead, respondent suggests, "[i]t is reasonable to infer that the probation department was aware of and considered" the other California placements suggested by appellant's counsel. However, because the probation department carefully documented its consideration of two local facilities and various out-of-state facilities, it would be unreasonable to infer the probation department considered the California facilities proposed by appellant, but failed to document it had done so. Such a speculative inference cannot constitute substantial evidence to support the juvenile court's finding no California facilities are available and adequate.

Respondent devotes most of its argument to facts in the record showing appellant is a flight risk and danger to the community, and had a terrible disciplinary record at juvenile hall. But, regardless of the strength of the evidence showing appellant was difficult to place, the juvenile court was not authorized to order an out-of-state placement

without evidence no California placement was available and adequate.[4] Because there is no evidence showing non-local California options were considered, we conclude the juvenile court abused its discretion and remand for the court to determine whether there are any available and adequate in-state placements.

DISPOSITION

The juvenile court's dispositional order is reversed. The matter is remanded with directions that the juvenile court consider whether there is a California facility available and adequate to meet appellant's needs.

[4] Respondent also asserts appellant's mother is a negative influence, but it cites no evidence that circumstance necessitated an out-of-state placement, rather than a placement in California distant from the Bay Area.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.